Filed 12/31/09 Hipp v. State Farm Mut. Auto. Ins. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

MICHAEL L. HIPP, Plaintiff and Appellant, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant and Respondent.	A118043 (Alameda County Super. Ct. No. RG03084941)

Michael L. Hipp appeals from the judgment of dismissal following the court's order granting respondent State Farm Mutual Automobile Insurance Company's (State Farm) motion to dismiss the action. Hipp raises a multitude of issues concerning discovery matters, summary adjudication, motions for reconsideration, judgment on the pleadings, and judicial bias. We affirm.

I. FACTUAL BACKGROUND

Preliminarily, we note that Hipp has not provided a properly supported statement of facts in his opening brief. The California Rules of Court require that litigants provide a summary of the significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (2)(C); see *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 (*Arbaugh*) [failure to comply with the Rules of Court requiring a summary of material facts supported by appropriate reference to the record may constitute waiver of error].) Hipp's direction in his brief that the facts can be found in certain documents in the record, e.g., his second amended complaint, his

separate statement of undisputed facts in opposition to State Farm's motion for summary adjudication, and his declaration, does not satisfy the Rules of Court. Incorporating by reference certain documents in a brief does not comply with rule 8.204 requiring a summary of the significant facts. Moreover, Hipp purports to incorporate only his view of the facts. This one-sided presentation of the evidence violates another established rule of appellate practice. An appellant must fairly set forth all of the significant facts, not just those beneficial to him. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) To the extent Hipp is representing himself on appeal, his status as a pro. per. litigant does not excuse him from the duty to comply with the rules.[1] An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 (*Rappleyea*).) Although Hipp's brief fails to comply with the rules, in the interests of justice, we have considered the appeal on its merits. (*Arbaugh, supra,* 80 Cal.App.3d at p. 503, fn. 1; *Copfer v. Golden* (1955) 135 Cal.App.2d 623, 635.)

On February 12, 1994, Hipp was involved in an automobile accident in Murray, Utah. Leslie Parker, the driver of the car that struck Hipp's truck, failed to yield on a left turn. Hipp suffered cervical strain and soft tissue injuries as a result of the accident. Parker was insured by Farmer's Insurance Company (Farmers). Hipp submitted a claim to Farmers which paid Hipp $30,000. Hipp in turn submitted a claim for underinsured motorist benefits (UIM) coverage to State Farm. Hipp had both an automobile policy and a personal liability umbrella policy issued by State Farm. While State Farm initially made payments to Hipp of $7,616 for medical expenses and $2,160 for wage loss, the parties disagreed about the value of his UIM claim and that claim was eventually arbitrated.

In 1998, Hipp considered hiring Roman Montes, an attorney, to help him with his claim. Montes had formerly worked for State Farm as an in-house attorney. Hipp met with Montes in October 1998 but they could not come to an agreement regarding fees.

[1] We note that Hipp has associated counsel on appeal who has co-authored portions of the opening brief.

Hipp averred that for several months thereafter Montes urged Hipp to hire him to resolve his claim with State Farm, and that Joseph Delgado, counsel for State Farm, pressured him to hire a lawyer. Hipp subsequently suspected a Montes-Delgado conspiracy to deny his claim and reported his suspicions to State Farm on October 4, 1999.

In October 1999, State Farm hired outside counsel to handle Hipp's claim. Hipp retained counsel to handle his claim in June 2000. Hipp's claim was ultimately arbitrated in 2002. The arbitrator found that Hipp's damages—including medical, psychiatric, wage loss, and general damages—totaled $400,461, minus $70,000 for amounts previously received for a net award of $330,461. State Farm paid the award in full.

In March 2003, Hipp, in propria persona, filed a complaint against State Farm and its outside counsel, Caudle, Welch & Umipeg (CWU), raising numerous allegations including breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, conspiracy, and intentional infliction of emotional distress. Following State Farm's successful demurrers to the complaint and the first amended complaint, Hipp filed a second amended complaint against State Farm and CWU in October 2003. Over the next two years, the parties proceeded to engage in discovery and numerous discovery disputes ensued. Finally, on December 2, 2005, State Farm moved for summary adjudication of Hipp's claims for breach of the implied covenant of good faith and fair dealing, conspiracy to commit bad faith, and punitive damages.

On December 16, 2005, the court entered a case management order, setting the trial date for May 5, 2006, and confirming that all fact discovery was closed. On January 23, 2006, State Farm moved for judgment on the pleadings on Hipp's cause of action for violation of Business and Professions Code section 17200.

On April 11, 2006, the court granted the motion for judgment on the pleadings and granted the motion for summary adjudication on the conspiracy to commit bad faith and punitive damages claims. The court found that State Farm proffered sufficient evidence to meet its burden of showing that no conspiracy existed between it and Montes and that its handling of Hipp's claim was not malicious, oppressive or fraudulent. The court denied State Farm's motion for summary adjudication on the breach of the implied

covenant of good faith and fair dealing claim, finding that there was a triable issue of fact as to whether State Farm failed to disclose Hipp's $1 million coverage limits under the personal liability umbrella policy within a reasonable time. The court also granted Hipp's motion to continue the trial date and reset the date for September 8, 2006. The court's order specifically stated that its order did not act to continue the discovery deadline and that there was no evidence in the record demonstrating good cause for a continuance of discovery.

State Farm filed a second motion for summary adjudication on the fraud, deceit, extortion and blackmail, intrusion, and emotional distress claims on May 19, 2006. Hipp did not oppose the motion but instead filed an ex parte application for a continuance and a request for additional discovery. State Farm opposed the request, noting that discovery had been closed since May 2005, that trial was set for September 2006, and that Hipp's request appeared to be for the purpose of delay. The court denied the request.

Hipp then filed another ex parte application for an extension of time to file an opposition to the second summary adjudication motion, this time requesting permission to exceed the normal page count limitations on the brief. The court denied the request.

The hearing on the summary adjudication motion was held on August 4, 2006. The court allowed Hipp to argue the motion although he had not submitted an opposition. Hipp again requested that the court reopen discovery and allow him more time to respond to the motion. The court denied Hipp's request and granted State Farm's motion for summary adjudication.

On August 10, 2006, Hipp filed an ex parte application for an order to shorten time for hearing of his motion to reopen discovery and continue the trial. The court denied the request. On August 22, 2006, Hipp filed another ex parte application for an order shortening time to hear his motion for reconsideration of the court's ruling on State Farm's motion for summary adjudication and to reopen discovery. Again, the court denied the application.

On September 8, 2006, Hipp appeared before the court with a letter from his psychotherapist indicating that Hipp was not mentally fit to proceed with trial and

recommending that trial be rescheduled. The court granted the request. The court subsequently set the trial date for April 6, 2007.

On September 11, 2006, Hipp filed a petition for writ of mandate challenging the trial court's order denying his request to continue the summary adjudication motion and to allow additional discovery. Division Two of the First District Court of Appeal denied the petition. (*Hipp v. Superior Court* (Oct. 20, 2006, A115173) [nonpub. order].)

On February 5, 2007, the court denied Hipp's motion for relief pursuant to Code of Civil Procedure[2] section 473, subdivision (b) requesting that the court consider his points and authorities in opposition to State Farm's summary adjudication motions and in support of his request to obtain further discovery. On March 5, 2007, the court denied Hipp's motion to compel seeking to reopen discovery.

On April 6, 2007, Hipp appeared for trial but announced that he was not ready to proceed. State Farm opposed a continuance. Hipp also presented the court with a letter accusing Judges Jon Tigar, Winifred Smith, and Wynne Carvill of judicial bias. The matter was assigned to Judge Cecilia Castellanos for trial. On April 9, 2007, Hipp again indicated to the court that he was not ready to proceed and requested a continuance of the trial. State Farm again opposed the request and also moved for a dismissal of the case pursuant to section 581, subdivision (b)(5) based on Hipp's refusal to go forward with the trial. The court dismissed the case.

On April 11, 2007, Judge George Hernandez responded to Hipp's April 6, 2007, letter, noting that Hipp's complaints against the judges sought to overturn their decisions which only the appellate court could do. He also suggested that Hipp seek legal assistance.

[2] Unless otherwise indicated, all subsequent statutory references are to the Code of Civil Procedure.

II. DISCUSSION

A. Motion to Compel Discovery

Hipp contends that the trial court erred in denying his motion to compel discovery. In particular he asserts that the court should have granted his motion at least as to two requests for admission—Nos. 43 and 47 and a corresponding interrogatory—No. 17.1.

A trial court has broad discretion in ruling on discovery matters; its ruling will be reversed on appeal only for an abuse of discretion. (*National Steel Products Co. v. Superior Court* (1985) 164 Cal.App.3d 476, 492.) Here, the record shows that request for admission No. 43 concerned State Farm's $30,000 offer of August 1999 and whether it contained a wage loss component, while No. 47 sought an admission that Montes and Delgado had a social relationship during the handling of the claim. At the hearing on the motion, the court recognized that Hipp had obtained both deposition testimony and responses to the requests for admission on the issues. The court explained that while Hipp was not satisfied with State Farm's responses, State Farm had responded to the requests for admission in the only manner that it could given its position and the conflicting testimony of its witnesses.

We cannot conclude that the court abused its discretion in denying the motion to compel. It could not force State Farm to answer the requests for admission in the manner sought by Hipp if it was contrary to its position on the issue, and compelling further depositions made no sense given that Hipp had already deposed the witnesses and they had already given conflicting testimony that Hipp could utilize to attempt to impeach State Farm's witnesses. As nothing would be gained by further discovery on the issues, the trial court properly denied the motion.

B. Judgment on the Pleadings

Hipp argues that the trial court erred in granting State Farm's motion for judgment on the pleadings on his claim for violation of Business and Professions Code section 17200. The court properly granted the motion.

A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (§ 438, subd.

(c)(3)(B)(ii).) In reviewing the granting of a judgment on the pleadings, the reviewing court exercises its discretion in determining whether there is a reasonable probability that the defect in the complaint can be cured by amendment. If it can be, the trial court has abused its discretion and the judgment must be reversed. If not, there has been no abuse of discretion and the reviewing court must affirm. The plaintiff has the burden of proving that amendment of the complaint to state a cause of action is a reasonable possibility. (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1323; see also *McGettigan v. Bay Area Rapid Transit Dist.* (1997) 57 Cal.App.4th 1011, 1023-1024.)

Here, *Textron Financial Corp. v. National Union Fire Ins. Co.* (2004) 118 Cal.App.4th 1061 (*Textron*) is dispositive of Hipp's cause of action for violation of Business and Professions Code section 17200. The *Textron* court explained that "the Unfair Insurance Practices Act (Ins. Code, § 790 et seq.; UIPA) does not create a private cause of action against insurers who violate its provisions. (*Moradi-Shalal v. Fireman's Fund Ins. Companies* [(1988)] 46 Cal.3d [287,] 304-305.) . . . While insurance companies are subject to California laws generally applicable to other businesses, including laws governing unfair business practices [citation], parties cannot plead around *Moradi-Shalal*'s holding by merely relabeling their cause of action as one for unfair competition." (*Textron*, at p. 1070.)

Hipp's cause of action for violation of Business and Professions Code section 17200 alleges that State Farm denied coverage based on unreasonable independent medical exam requirements and medical document review processes. These allegations are the types of practices covered under the UIPA and cannot support a section 17200 claim. (*Textron*, *supra*, 118 Cal.App.4th at p. 1070.)

Hipp's reliance on *State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093 is misplaced. As explained in *Textron*, *supra*, 118 Cal.App.4th at pages 1071-1072, *State Farm Fire & Casualty*'s holding allowing common law claims for fraud and breach of the implied covenant of good faith and fair dealing to go forward even though the same conduct violated the UIPA, "has been undercut by the Supreme Court's subsequent disapproval of its definition of 'unfair' business practices" in *Cel-*

Tech Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 184-185. We agree with the *Textron* court that "given the Supreme Court's disapproval of [*State Farm Fire & Casualty*'s] 'amorphous' definition of 'unfair' practices . . . , reliance on general common law principles to support a cause of action for unfair competition is unavailing." (*Textron, supra*, 118 Cal.App.4th at p. 1072.)

C. First Summary Adjudication Motion

Hipp contends that the trial court erroneously granted State Farm's first motion for summary adjudication because he presented sufficient evidence to demonstrate the existence of a triable issue of fact on his claims of conspiracy to breach the covenant of good faith and fair dealing and his demand for punitive damages.

We review a trial court's grant of summary adjudication de novo. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 388-389.) "In performing our de novo review, we must view the evidence in a light favorable to [the] plaintiff as the losing party [citation], liberally construing [his] evidentiary submission while strictly scrutinizing [the] defendant['s] own showing, and resolving any evidentiary doubts or ambiguities in [the] plaintiff's favor." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769.)

A defendant seeking summary adjudication "bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) California law requires that "a defendant moving for summary [adjudication] . . . present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Id.* at p. 854, fn. omitted.)

Here, Hipp does not point to what evidence in the record supports the existence of a triable issue of fact. While he directs this court to his opposition papers for the argument he made below, this does not satisfy the requirement that a brief "support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, rule

8.204(a)(1)(B); *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 290.) "An appellant cannot rely on incorporation of trial court papers, but must tender arguments *in the appellate briefs*." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 109.) In any event, we have conducted an independent review of the record, and can conclude that the trial court's ruling was correct.

Hipp did not produce any evidence that a conspiracy existed between State Farm and Montes. He relied on speculation to support his claim that Montes conspired with Delgado of State Farm from his first meeting with Montes regarding representation. While Hipp admitted in his deposition that Delgado was not handling his claim when he first met with Montes on October 6, 1998, he claimed that Delgado conspired to get Hipp to retain Montes as counsel. But Hipp also acknowledged that he never met with Montes again and only spoke with him by telephone, and that he never hired him. While Hipp averred that Delgado and Montes were friends and that Delgado visited Montes's office on October 6, 1998, he could only point to "the law of probability" for his claim that they conspired as of that date to force Hipp to hire Montes.

Delgado, in turn, testified at his deposition that he was never at Montes's office when Montes met with Hipp. He further testified that he made no efforts to try to get the Hipp claim assigned to him and he exchanged no information with Montes about the claim. Montes also testified that only his secretary was present in the office on the day of his meeting with Hipp. More importantly, he averred that he never disclosed any information about Hipp's claim to Delgado or other State Farm counsel.

In order to support a claim for conspiracy to commit breach of the implied covenant of good faith, the complaint must allege the formation and operation of the conspiracy, the wrongful act or acts done in furtherance of the conspiracy, and the resulting damage. (*Barney v. Aetna Casualty & Surety Co.* (1986) 185 Cal.App.3d 966, 981.) Here, Hipp has not shown that there was an agreement between Montes and Delgado, or that they committed any acts in furtherance of the conspiracy. To the contrary, the evidence shows that Hipp did not hire Montes, and that Montes and Delgado

did not exchange information about Hipp's claim. Further, Hipp's claim was eventually arbitrated in his favor.

Finally, Hipp's reliance on his suspicions and speculation that a conspiracy existed was insufficient to support his cause of action. " ' "[C]onspiracies cannot be established by suspicions. . . . There must be evidence of some participation or interest in the commission of the offense." ' [Citation.] An inference must flow logically from other facts established in the action." (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) Here, Hipp simply believed that a conspiracy existed based on coincidences and probabilities. His suspicions were insufficient to support the cause of action. Based on the record, the trial court properly found that no conspiracy existed.

Hipp also failed to demonstrate the existence of a material fact concerning his claim for punitive damages. He argues that the facts supporting his conspiracy claim also supported his punitive damages claim. To state a cause of action for punitive damages, a plaintiff must show by "clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice . . . ." (Civ. Code, § 3294, subd. (a).) Here, as we have discussed, defendant failed to establish that State Farm engaged in a conspiracy in its handling of Hipp's claim. In light of the absence of evidence of a conspiracy, the trial court also found that Hipp's cause of action for punitive damages was not viable.

Hipp also complains that the trial court erred in sustaining State Farm's hearsay objections to Hipp's evidence submitted in opposition to the first summary adjudication motion. Hipp contends that all of the court's rulings on State Farm's hearsay objections were in error but his opening brief sets forth only two examples, objections Nos. 10 and 12 to Hipp's declaration submitted in opposition to the motion. Again, Hipp incorporates by reference a summary of the objections he made below but does not include any analysis or citation to authority in his brief.

"When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) An appellant's burden is not simply to raise a point and state that the court erred in its ruling. (1 Eisenberg et al., Cal.

Practice Guide: Civil Appeals and Writs (The Rutter Group 2009) [¶] 8.17.1, pp. 8-5 to 8-6.) It is not the role of the appellate court to construct theories or arguments that would undermine the judgment and defeat the presumption of justice. (*Ibid.*)

In any event, we have reviewed State Farm's objections to Hipp's declaration and conclude that any error in sustaining the hearsay objections was harmless. Even if the court had considered Hipp's declaratory statements for the asserted basis that the statements were made, they would not have established that a conspiracy existed between State Farm and Montes to defraud Hipp of his insurance benefits.

D. Second Summary Adjudication Motion

Hipp argues that the trial court erred in denying his ex parte application to continue the motion and allow him to conduct further discovery.

Section 437c, subdivision (h) provides that a court may deny a summary adjudication motion and order a continuance if it appears from the affidavits submitted in opposition to the motion that "facts essential to justify opposition may exist but cannot, for reasons stated, then be presented . . . ." The party seeking a continuance " 'must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' " (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633.) The decision whether to grant a continuance is within the sound discretion of the trial court. (*Ibid.*; *Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 190.)

Here, Hipp sought the continuance, contending that he needed to take further depositions and obtain documents including an updated privilege log from State Farm. He argued that his work schedule as an aerospace software engineering consultant prevented him from having sufficient time to oppose the motion and that he had earlier received a continuance of the trial date and hoped to prepare for trial, not oppose a motion for summary adjudication. State Farm opposed the motion, noting that the case had been pending for more than three years, that trial was set in approximately seven weeks for September 8, 2006, and had been continued to that date on Hipp's motion. State Farm argued that Hipp's opposition papers to the second summary adjudication

motion were due the following day and that Hipp had received the requisite 75 days' notice. State Farm also noted that discovery had been closed for over a year since May 2005 and that the court, in granting Hipp's motion to continue the trial, specifically noted that its order did not act to continue the discovery deadline as "the record does not contain evidence demonstrating good cause for its continuance." State Farm also argued that there was no good cause for additional discovery inasmuch as Hipp had taken over 16 depositions, and propounded eight separate sets of interrogatories and requests for admissions and three sets of requests for production of documents. The court summarily denied the motion.

On this record, the court did not abuse its discretion in denying Hipp's motion for a continuance. In the 17 months preceding Hipp's motion, the court ruled three times that fact discovery was closed. In particular, as noted by the court in granting Hipp's motion to continue the trial date to September 8, 2006, Hipp was "advised at the hearing on this motion to select a date on which he would be ready to proceed and his work commitments would not interfere with the trial. He selected September 8, 2006." The court further noted in its order that the order did not act to continue the discovery deadline, and that the record did not contain any evidence demonstrating good cause for a continuance of discovery. While Hipp complained in his motion that opposing the summary adjudication motion interfered with his preparation time for trial, motion practice is part and parcel of litigation and summary adjudication or summary judgment motions are to be expected. Although Hipp, as a pro. per. litigant, might not have anticipated the aggressive defense launched by State Farm, another summary adjudication motion within months of the scheduled trial date was certainly foreseeable. Hipp undertook the burden of representing himself and was subject to the same rules and deadlines as represented plaintiffs. (See *Rappleyea, supra*, 8 Cal.4th at pp. 984-985 [rules of civil procedure apply equally to self-represented parties and those represented by counsel].)

Here, the court justifiably denied Hipp's motion for a continuance of the summary adjudication motion. Hipp's moving papers did not explain how the additional discovery

sought would aid him in opposing the summary adjudication motion or why the discovery was not conducted earlier. Although he averred that the discovery would "likely . . . expose essential evidence" and that essential documents were "likely to exist," since he did not assert with any specificity the existence of evidence he sought to discover, his assertions amounted to nothing more than a fishing expedition. (See *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254-255 [declaration that does not demonstrate evidence to oppose motion exists or why it could not have been obtained sooner insufficient to support continuance].) We perceive no abuse of discretion.

Hipp also contends that the trial court abused its discretion in denying his application to file a late opposition to the second summary adjudication motion. Hipp argued that his assistant was called away on a medical emergency on July 20, 2006. He ignores, however, that the opposition to the summary adjudication motion was due only one day later on July 21, 2006. And, in his points and authorities in support of his application for an extension of time—which was not filed until July 28, 2006—he acknowledges that even if his assistant had been available, he could not have filed a complete and timely opposition: "If not for Ms. Coleman's emergency, Hipp could have probably filed *something* by Friday, July 21 (or perhaps Monday July, 24 [*sic*]—one filing day late)."

The trial court did not abuse its discretion in denying Hipp's application. The medical emergency of his assistant on the day before Hipp's opposition was due might have justified the *actual* late filing of an opposition, but Hipp did not file one and did not request a mere one-day delay. Moreover, as the court noted in its order granting the second summary adjudication motion on the merits, "[p]laintiff failed to explain at oral argument why he could not prepare any Opposition papers to rebut Defendant's arguments in support of its Motion for Summary Adjudication, when he had Defendant's Motion papers 2 1/2 months before the hearing, but he could generate numerous pages of argument in support of his two Ex Parte Applications."

Hipp further argues that the trial court erred in granting State Farm's second summary adjudication motion. Here, again, Hipp fails to support his argument by

citation to the record or legal authority. More importantly, however, Hipp failed to submit any opposition to the motion, and as the court acknowledged during the hearing on the motion, it is "difficult to oppose the motion if there is no evidence responding to [State Farm's] showing." Regardless, the court allowed Hipp to argue in opposition to the motion but Hipp simply repeated the arguments that he needed additional time for discovery and to prepare an opposition to the motion.

On these facts, the trial court properly found in favor of State Farm on the merits of the second summary adjudication motion. Having no opposing evidence before it, the court properly found that there were no triable issues of fact on Hipp's causes of action for fraud, deceit, conspiracy to commit fraud, emotional distress, intrusion, and extortion, attempted extortion, blackmail and attempted blackmail. (See § 437c, subd. (b)(3) [failure to file a separate statement in opposition that responds to each of the material facts contended by the moving party to be undisputed "may constitute a sufficient ground, in the court's discretion, for granting the motion"].) Despite Hipp's failure to file an opposition, the trial court's order reflects that it considered his requests for additional time to respond to the motion and to reopen discovery but did not find that the requests were reasonable. Rather, the court concluded that Hipp had ample time to conduct discovery for over two years, that discovery had been closed since May 2005, and that he had "not shown that facts essential to justify the Opposition exist but cannot be presented due to any issues concerning discovery." In short, the court appears to have painstakingly considered Hipp's arguments but found them to be without merit. Hipp has similarly failed to demonstrate here that the court's ruling was in error.

Hipp also contends that the court abused its discretion in denying his request to reconsider the court's rulings on the second motion for summary adjudication and his request for a continuance and further discovery. He asserts that new evidence, an expert declaration by Clinton Miller, required that the court grant the motion.

Section 1008 governs reconsideration of court orders. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 685 (*Garcia*).) " 'It is the exclusive means for modifying, amending or revoking an order. That limitation is expressly jurisdictional.' [Citation.]" (*Gilberd v.*

AC Transit (1995) 32 Cal.App.4th 1494, 1499.) Section 1008, subdivision (a) provides that "[w]hen an application for an order has been made to a judge, or to a court, and . . . granted, . . . any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and *based upon new or different facts, circumstances, or law*, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. . . ." (Italics added.) The court's discretion under section 1008 is limited. Subdivision (e) of section 1008 specifically limits the court's jurisdiction "with regard to applications for reconsideration of its orders and renewals of previous motions, and *applies to all applications to reconsider any order* of a judge or court, . . . whether the order deciding the previous matter or motion is interim or final. *No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section*." (Italics added.) "According to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.' " (*Gilberd*, at p. 1500.)

Miller's declaration did not constitute new evidence. It was based neither on new or different facts. Rather, Miller averred that he reviewed the facts, evidence and exhibits referenced in Hipp's statement of undisputed facts in support of Hipp's motion for reconsideration, that he may have reviewed additional material, and that based upon his review he opined Hipp's causes of action were meritorious. Miller's conclusory statement that "State Farm's conduct in handling Mr. Hipp's underlying claim and in responding to Mr. Hipp's concerns and complaints was outrageous, despicable, malicious, fraudulent, and oppressive to an extent I have rarely seen approached in my 40 years of insurance experience," was an opinion that could have been rendered in time for Hipp to oppose the summary adjudication motion. It was not based on any newly discovered evidence and Hipp did not satisfactorily explain why it was not provided

earlier.[3] In order to obtain relief under section 1008, Hipp was required to give "a satisfactory explanation for failing to provide the evidence earlier, which can only be described as a strict requirement of diligence." (*Garcia*, *supra*, 58 Cal.App.4th at p. 690.) Here, not only was Miller's declaration not new evidence, Hipp failed to show that it could not have been obtained earlier. The court thus properly denied the motion.

Hipp further complains that the court's order, denying his ex parte application for an order shortening time for a hearing of a motion to reopen discovery and continue the trial, constituted an abuse of discretion. Hipp's argument does not provide any citations to the record or references to legal authority. We have nonetheless reviewed the record and are confident that the court did not abuse its discretion. The court based its decision on the factors listed in section 2024.050, subdivision (b) in determining whether to grant the motion to reopen discovery after a new trial date had been set. The court ruled that it did not find good cause to reopen discovery. In particular, the court noted that when it earlier continued the trial date, it considered Hipp's status as a pro. per. litigant and the strong public policies in favor of a trial on the merits: "And I would simply observe that the Court attempted to be as generous as possible to Mr. Hipp in light of what he represented about his work schedule and his difficulties in preparing for trial; however, having granted that continuance, I find now that the plaintiff has not demonstrated a necessity [in] and the reasons for the discovery, has not demonstrated the diligence that is required by 2024.050(b). It seems—although the Court doesn't have the information that it would like about the amount and nature of the discovery, it seems at least possible that it would delay the trial date. In fact, the plaintiff is requesting that the trial be delayed, and that's something that the Court is required to consider under 2024.050(b)(3), and I find with respect to subpart four the matter has been pending for a very long time.[4] [¶]

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[3] His moving papers state that "[t]he declaration of Mr. Miller is a small component of Hipp's CCP §437c(h) and can (could easily have been) worked in along with any other further discovery order."

[4] In ruling on a motion under section 2024.050, subdivision (b), the court is required to consider: "(1) The necessity and the reasons for the discovery. [¶] (2) The diligence or lack of diligence of the party seeking the discovery . . . . [¶] (3) Any

With respect to the plaintiff's intention that other pretrial litigation and by way of summary judgment motion has used up the time that he intended to use to prepare for the trial, the Court is sympathetic to the argument, but there comes a point at which the court has to treat every litigant as though—the Court's accommodation of a self-represented litigant's expressed need to satisfy work obligations and demands of litigation has a limit, and having continued the case for four months, it seems to the Court that the need to respond to a summary judgment motion itself was not reason for a further continuance." In sum, we reject Hipp's argument that the court abused its discretion in denying his motion. To the contrary, the court appears to have given Hipp's request its due but, in light of the factors that the court must consider in ruling on a motion to reopen discovery following the setting of a new trial date, determined that Hipp had not met the requisite necessity and diligence requirements for discovery and a further continuance of the trial date.

E. Section 473, Subdivision (b) Motion

Following the court's denial of Hipp's motion to reopen discovery, Hipp brought a motion under section 473, subdivision (b) seeking relief from the court's orders on State Farm's two summary adjudication motions on the basis of his mistake, inadvertence, surprise, or excusable neglect. The court denied the motion, stating that it was "nothing more (or less) than a motion to reconsider prior rulings. It is time for the parties to turn to trial preparation. Plaintiff is admonished to stop re-litigating motions previously determined."

Hipp now contends that the court abused its discretion in denying the motion. He suggests that it is apparent that Judge Carvill did not review or consider the evidence he offered in support of the motion.

We must presume that the trial court complied with its judicial duties. (Evid. Code, § 664.) We agree with the court that Hipp's moving papers were nothing more

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likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set . . . . [¶] (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action."

than an attempt to obtain reconsideration of the court's prior orders and that he had no valid basis under section 473 for doing so. While he complains of a "built-in pro per disadvantage," Hipp undertook to engage in complex litigation without a lawyer and bore the burden of his failure to understand or anticipate a dynamic, aggressive defense strategy. Section 473 was not intended to provide a pro. per. litigant the opportunity to file a motion for a continuance and additional discovery in lieu of timely filing an opposition to a summary adjudication motion. Pro. per. litigants are not entitled to special exemptions from the Code of Civil Procedure. (*Rappleyea, supra,* 8 Cal.4th at pp. 984-985.) They are charged with maintaining the conduct of their litigation and are to be treated like any other party. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 (*Nwosu*), and cases cited therein.) Hipp failed to put forth a valid basis for vacating the court's prior orders on State Farm's summary adjudication motions. He was not entitled to relief under section 473.

F. Final Motion to Compel Discovery

Hipp also argues that the court abused its discretion in denying his motion to compel discovery which was filed two months before the April 6, 2007, trial date. The court denied the motion as untimely, finding that discovery had long been closed and that to the extent Hipp was seeking permission to make supplemental document demands under section 2020.510, subdivision (c), the court had previously denied his motion to reopen discovery. We agree with the trial court's order. The trial court had previously ordered discovery closed and had declined to reopen discovery because Hipp failed to demonstrate good cause for doing so. The trial court did not abuse its discretion in denying his belated request to reopen discovery.

G. Sanctions

Hipp argues that Judge Richman erred in refusing to award him sanctions because he was a pro. per. litigant. Hipp does not provide any citations to the record regarding the court's ruling. We are not required to search the record to find error. " '[I]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citations.]' " (*Nwosu, supra,* 122 Cal.App.4th at

p. 1246.) We note, however, that a pro. per. litigant cannot recover attorney fees as a discovery sanction. (See *Kravitz v. Superior Court* (2001) 91 Cal.App.4th 1015, 1020.)

H. Judicial Bias

Finally, Hipp contends that Judges Tigar, Smith, and Carvill were not impartial, favored State Farm in evidentiary and procedural matters, and were prejudiced against him as a pro. per. litigant. As State Farm points out, Hipp waived this issue on appeal because he failed to raise it before the courts he claimed were biased against him. It is well settled that " '[i]t is too late to raise the issue [of judicial bias] for the first time on appeal.' " (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111 (*Guerra*).) "Bias and prejudice are grounds for disqualification of trial judges. (§ 170.1, subd. (a)(6).)" (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1218.) Here, however, Hipp failed to comply with section 170.3's procedures and thus did not preserve his claim of judicial bias for review on appeal. The claim is therefore waived. (*Guerra*, *supra*, 37 Cal.4th at p. 1111.)[5]

[5] While it is true that, at the trial call, Hipp submitted to the presiding judge a letter complaining about the alleged bias of the judges who had previously ruled on the various motions filed by Hipp and by State Farm, Hipp's after-the-fact allegations of bias were untimely and did not comply with statutory requirements. (§ 170.3.)

III. DISPOSITION

The judgment is affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P.J.

_____
REARDON, J.